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No. 87-1383

SUPREME COURT, D.C.
FILED

AUG 24 1988

JOSEPH F. SPANIO, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, APPELLANT

v.

IRWIN HALPER

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOINT APPENDIX

IRWIN HALPER
*6 Sterling Road
Armonk, New York 10504
(914) 273-9848
Appellee, Pro Se*

CHARLES FRIED
*Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for Appellant*

**JURISDICTIONAL STATEMENT FILED FEBRUARY 17, 1988
PROBABLE JURISDICTION NOTED JUNE 13, 1988**

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The following opinions, judgments, and notice of appeal have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the printed jurisdictional statement:

Opinion of district court filed April 24, 1987	6a
Opinion of district court filed July 28, 1987	1a
Amended Judgment filed October 21, 1987	12a
Judgment filed October 28, 1987	15a
Notice of Appeal to the Supreme Court of the United States filed November 19, 1987	13a

UNITED STATES DISTRICT COURT DOCKET

UNITED STATES OF AMERICA, PLAINTIFF

v.

HALPER, IRWIN
HALPER, MORRIS, DEFENDANTS

IRWIN HALPER
MORRIS HALPER, M.D., DEFENDANT-THIRD PARTY

against

ROBERT HALPER, THIRD PARTY DEFENDANT

CAUSE

Purs. to 31 U.S.C. §§ 3729-3731 — (False Claims Act) — Action for fraud in the filing of Medicare claim forms —

ATTORNEYS

For the Plaintiff:
RUDOLPH W. GIULIANI
U.S. Attorney-SDNY
By: Amy Rothstein
Ass't U.S. Attorney
One St. Andrews Plaza
New York, N.Y. 10007
(212) 791-1976

Irwin Halper
11195-054
F. I. C. Danbury
Danbury, Connecticut 06811

Kuttner, Toner &
DiBenedetto
By: D. J. DiBenedetto
3 Becker Farm Road
Roseland, NJ 07068

For: Morris Halper

DATE	NR.	PROCEEDING
04-11-86	01	Fld. Complaint; Issd. Summons & Notice purs. to 28 U.S.C.636(c).
04-17-86	02	Fld. Pltff. Demand for Jury Trial.
05-02-86	03	Filed summons with acknowledgment of service of Complaint by mail served: Irwin Halper on 4-14-86 Morris Halper, N.D. on 4-14-86
05-08-86	03	Filed ANSWER of deft, Irwin Halper nd demand for tral by jury.
05-29-86	04	Filed stip. and order ext. deft. Morris Halper, M.d.'s time to answer to 6-2-86—Sweet, J.
06-03-86	05	Filed ANSWER, Crossclaim and Jury Demand of deft., Morris Halper
06-10-86	06	Filed plttfs notice of taking deposition of deft, Morris Haloer ib 7-29-86
06-10-86	07	Fld. PRETRIAL ORDER. . . that counsel are directed to meet and discuss settlement,p/t discovery and all preliminary matters etc. So Ordered. SWEET, J.
06-11-86	08	Filed THIRD PARTY COMPLAINT by defeendant-Third Plaintiff, Morris Halper c/m
07-14-86	09	Filed ANSWER and denial of Cross-claim for Contribution and Indemnification and demand for trial by jury be deft. Irwin Halper
07-16-86	10	Filed plttf's notice of taking deposition of Irwin Halper on 7-31-86.

DATE	NR.	PROCEEDING
07-16-86	11	Filed plttfs Amended notice of taking deposition of deft. Morris Halper on 7-31-86.
09-03-86	12	Filed Memorandum—from pro se Writ Clerk to Judge Sweet with memo. end. granting H leave to file the attached papers—Sweet, J. c/m 9-4-86
09-04-86	13	Filed ANSWER of deft. Irwin Halper to plttf's First Set of interrog. and requests for documents
09-03-86	14	Filed Memo. to Judge Sweet from Pro se Writ Clerk with memo. end. granting deft. leave to file the attached paper—Sweet, J. c/m 9-4-86
09-04-86	15	Filed deft. Irwin Halper's interrog.
09-04-86	16	Filed deft. Answer to Request for production of document
10-17-86	17	Filed stip. and order of dismissal as to deft. Morris Halper pursuant to rule 41(a) (1)—Sweet, J.
12/16/86	18	Fld. MEMO ENDORSED on letter to J. Sweet from Amy Rothstein. . . we request that we be permitted until 1/9/87 to file our motion papers GRANTED. SO ORDERED SWEET, J.
01-08-87	19	Filed plttf's declaration and notice of motion for summary judgment pursuant to rule 56 (a) ret. 2-13-87
01-08-87	20	Filed plttf's statement pursuant to rule 3(g). orig. to chambers

DATE	NR.	PROCEEDING
01-08-87	21	Filed plttf's memo. of law in support of plttf's Motion for summar orig. to chambers
04-24-87	22	Filed OPINION # 60879. Therefore summary judgment in the amount of \$16,000 is granted in the Government's favor. — Sweet, J. (cmc) date unknown
04-27-87	23	Filed pro se deft. Irwin Halper Letter to Judge Sweet undated (Rec in chambers 1-14-87) requesting that this letter be my reply to the papers I received from the government's agent Amy Rothstein fld.
04-30-87	24	Filed plttf's Notice of Motion for Re-argument . . . for an order granting reargument purs to Local rule 3(j).
04-30-87	25	Filed plttf's Memorandum of law in support of its motion to reargue. orig. to chambers
05-01-87	26	Filed JUDGMENT Pursuant to this court's opinion of April 23, 1987, this case dismissed with prejudice and without costs. — Sweet, J. ent. 5-4-87 (cmc) date unknown.
05-05-87	27	Filed plttf's Amended Notice of Motion for Reargument and Amendment of the Judgment pursuant to rule 3(j) and rule 3(j). ret. 5-15-87.

DATE	NR.	PROCEEDING
07-28-87	28	Filed OPINION #61314: Judgment in this amount would violate the Double Jeopardy Clause. The statute is therefore unconstitutional as applied to deft Halper and the sought-after relief of \$130,000 must be denied. The provision for double damages passes Double Jeopardy scrutiny and will be applied to give the Govt. judgment in the amt of \$1,170 and the costs of the civil action. The judgment will be amended in accordance with this opinion. . . So Ordered. .Sweet, J. cmc AL
08-27-87	29	Fld. NOTICE OF APPEAL to the Supreme Court of the United States from the opinion and order of this court filed in the above matter on 7-28-87. Sent; copies to; Mr. Irwin Halper Six Sterling Road Armonk, NY 10504 Foward copy of appeal to district Judge. Original Appeal to Orders & Appeals with two copies of Docket Sheet. KY
10-21-87	30	Fld. AMENDED JUDGMENT #87,1916 Ordered that the judgment filed on 5-1-87 is vacated and that Plttf is awarded in the amount of \$1,170. against deft. SWEET, J. EOD 10-27-87 Mailed Court of appeal letter & forms in re; Appeal procedure to;

DATE	NR.	PROCEEDING
10-28-87	31	Fld. JUDGMENT Ordered that purs to this courts opinion of 7-27-87 amending an earlier opinionof 4-23-87 judgment will be entered in this case in the amount of \$1,170.00 in accordance with the July 27 opinion with costs. .SWEETNJ. cm EOD 10-27-87
11-19-87	32	Fld. NOTICE OF APPEAL to Supreme court of the US from the judgement entered of 10-21-87 mailed copies of appeals to Irwin Halper Six sterling Road Armonk nY 10 forward copy of appeal to DISTRICT Judge Original appeal with 2 copies of docket to orders and appeals and copy of judgment. kr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

85 CRIM. 247

UNITED STATES OF AMERICA

v.

IRWIN HALPER, DEFENDANT

INDICTMENT

[Filed Apr. 26, 1985]

COUNTS ONE THROUGH SIXTEEN

The Grand Jury charges:

INTRODUCTION

At all times relevant to this Indictment:

1. On July 30, 1965, Congress enacted the Medicare Program under Title XVIII of the Social Security Act. The Medicare Program provides, *inter alia*, for basic insurance coverage for in-hospital and out-patient medical services for individuals who are 65 years of age and over and to certain other persons entitled to Social Security benefits because of disability.

2. Blue Cross and Blue Shield Inc. of Greater New York ("Blue Cross"), 622 Third Avenue, New York, New York, administered the Medicare Program in Manhattan, Bronx, Staten Island, Rockland, and Westchester pursuant to its contract with the United States Department of Health and Human Services ("HHS"). Blue Cross served

as a fiscal intermediary to approve and pay claims filed by providers of Medicare services, such as laboratories, hospitals, and physicians. Each Medicare claim from a provider was processed by Blue Cross, and Blue Cross, as agent for HHS, then issued a check to the provider for all approved services.

3. Providers of Medicare services under the supplementary medical insurance benefits program (Medicare "Part B") filed claims with Blue Cross for payments on standardized Medicare claim forms. On each such form, a provider was instructed to fill in, *inter alia*, its name and address, the date on which the medical services were performed, the appropriate code for the place at which the services were performed (e.g., "O" for Doctor's Office, "H" for Patient's Home, "NH" for Nursing Home, "SNF" for Skilled Nursing Facility), the patient's name, a description of the medical services performed, including the billing procedure code for those services (see paragraphs 4 and 5 below), and the provider's charges for the services performed.

4. As part of the description of the medical services performed, the provider was instructed to include on the claim forms the Medicare procedure code that corresponded to each medical service. The Medicare procedure code was found in manuals made available to each provider by Blue Cross, listing the procedure code corresponding to each type of medical service and the cost Medicare would pay to providers for that service.

5. In addition to the procedure codes corresponding to each particular medical service, the manuals also specified two procedure codes to be included on Medicare claim forms so that the provider could receive additional reimbursement for performing a medical service when he had to travel to a private home, a nursing home or a Skilled Nursing Facility to perform that service. The "9018" pro-

cedure code was the proper code for seeking reimbursement for services performed on the *first* or *only* patient seen at a private home, a nursing home or a Skilled Nursing Facility. The "9019" procedure code was the proper code for seeking reimbursement for services performed on each *subsequent* patient seen on the same day at the same facility. According to the manuals, at all times relevant to the Indictment, the reimbursement allowed by Medicare for services billed under the "9018" code was either \$10.00 or \$12.00, and the reimbursement allowed by Medicare for services billed under the "9019" code was \$3.00.

6. IRWIN HALPER, the defendant, was the manager of the New City Medical Laboratories, Inc. ("NCML"), 345 North Main Street, New City, New York 10956, whose employees provided medical services to patients at, *inter alia*, the following two facilities pursuant to contracts between NCML and those two facilities: Friedwald House, New Hempstead Road, New City, New York and Riverside Nursing Home, Route 9W, Haverstraw, New York.

STATUTORY ALLEGATIONS

7. From in or about January 1982, until in or about December 1983, in the Southern District of New York, IRWIN HALPER, the defendant, unlawfully, wilfully, and knowingly would and did devise and intend to devise a scheme and artifice to defraud the Medicare Program and to obtain money by means of false, fictitious and fraudulent pretenses, representations, and promises.

8. It was a part of said scheme and artifice to defraud that the defendant IRWIN HALPER would and did file and cause to be filed with Blue Cross Medicare claims charging for services that the defendant characterized and caused to be characterized falsely, fictitiously, and fraudulently in order to obtain higher fees.

9. Among the means that the defendant IRWIN HALPER would and did use in carrying out the scheme and artifice to defraud were the following:

(a) During the period covered by the Indictment, the defendant IRWIN HALPER, falsely, fictitiously and fraudulently, would and did fill out and cause to be filled out Medicare claim forms using the higher-priced "9018", rather than the lower-priced "9019", billing procedure code for numerous patients served at an NH facility on a particular day, when in truth and in fact, as the defendant well knew, the "9018" code could only properly be used for the *first* or *only* patient served at an NH facility on a particular day;

(b) The defendant IRWIN HALPER would and did submit and cause to be submitted by mail to Medicare through Blue Cross, the false, fictitious and fraudulent Medicare claim forms referred to in paragraph (a);

(c) By submitting and causing to be submitted those false, fictitious, and fraudulent Medicare claim forms the defendant IRWIN HALPER would and did cause checks to be mailed to NCML by Medicare through Blue Cross, providing reimbursement in an amount which was higher than that to which NCML was entitled.

10. For the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraphs 1 through 9 of this Indictment, on or about the dates set forth in Counts 1 through 16 below, in the Southern District of New York, the defendant IRWIN HALPER placed and caused to be placed in post offices and authorized depositories for mail, and knowingly caused to be delivered according to the directions thereon, letters containing checks, made payable to New City Medical Laboratories, Inc., 345 North Main Street, New City, New York 10956, which are hereinafter described in

Counts 1 through 16, in payment of the false, fictitious and fraudulent claims he had submitted and caused to be submitted to Medicare through Blue Cross.

Count	Check Number	Date of Check/ Approximate Date of Mailing
1	53602611	3/8/82
2	53619135	3/15/82
	53619136	3/15/82
3	53651294	3/29/82
4	53666496	4/2/82
5	53898706	7/2/82
6	53912746	7/12/82
	53912747	7/12/82
	53912748	7/12/82
7	53930125	7/19/82
8	54383978	1/10/83
	54383979	1/10/83
9	54425682	1/24/83
	54425683	1/24/83
10	54444766	1/31/83
	54444767	1/31/83
	54444769	1/31/83
	54444770	1/31/83
11	54462045	2/4/83
	54462046	2/4/83
	54462047	2/4/83
	54462048	2/4/83
12	54479169	2/14/83
13	54496301	2/22/83
	54496303	2/22/83
14	54546275	3/14/83
15	55982037	1/20/84
	55982038	1/20/84
	55982039	1/20/84
16	56037619	2/3/84

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS SEVENTEEN THROUGH EIGHTY-ONE

The Grand Jury further charges:

11. Paragraphs 1 through 6 of this Indictment are hereby incorporated by reference and re-alleged as though fully set forth herein.

12. From in or about January 1982, until in or about December 1983, in the Southern District of New York, IRWIN HALPER, the defendant, unlawfully, wilfully, and knowingly did make and present, and did cause to be made and presented, to a department and agency of the United States to wit, the Department of Health and Human Services through its fiscal intermediary Blue Cross, certain false, fictitious, and fraudulent claims for payment upon and against the United States, to wit, the Medicare claims described in Counts 17 through 81 below, which falsely, fictitiously and fraudulently characterized medical services performed by NCML on all the patients listed below, on each day listed below, at the particular NH facility listed below, as services reimbursable under the higher-priced "9018" procedure code, when in truth and in fact, as the defendant IRWIN HALPER well knew, only medical services performed on the *first* or *only* patient at a particular NH facility on a particular day were services reimbursable under the "9018" procedure code:

Count	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
17	1/12/82	Friedwald	Curtis	1205622763	2/16/82
18	1/12/82	"	Smith	1206729223	3/4/82
19	1/12/82	"	Hindle	1205301945	2/16/82
20	1/12/82	"	Hausner	1205301931	2/16/82
21	1/12/82	"	Hendelman	1206728688	2/16/82
22	6/2/82	Riverside	McCabe	1216926347	6/14/82
23	6/2/82	"	Paider	1216926338	6/14/82
24	6/2/82	"	Decker	1217228947	6/14/82
25	6/2/82	"	Geiger	1216926195	6/14/82
26	6/2/82	"	Hasko	1216926199	6/14/82
27	6/2/82	"	Kogan	1216926197	6/14/82
28	12/6/82	Riverside	Koepping	3300536037	12/30/82
29	12/6/82	"	Johnson	3300536034	12/30/82
30	12/6/82	"	Fein	3300536036	12/30/82
31	12/6/82	"	Tracy	1301228964	1/7/83
32	12/6/82	"	Graff	3234735129	12/9/82
33	12/6/82	"	Rose	3301237116	1/7/83

Count	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
34	12/6/82	"	Martinez	3234735131	12/9/82
35	12/6/82	"	LaPlace	3234735101	12/9/82
36	12/6/82	"	Yonko	3234735128	12/9/82
37	12/6/82	"	Clark	3234735100	12/9/82
38	12/14/82	Friedwald	Greenberg	3302036851	1/17/83
39	12/14/82	"	McArdle	3302036860	1/17/83
40	12/14/82	"	Klein	3302036856	1/17/83
41	12/14/82	"	LaBlang	3305333910	1/17/83
42	12/14/82	"	Schweitzer	1301705517	1/12/83
43	12/14/82	"	Feldman	3302036864	1/17/83
44	12/14/82	"	Storm	1301705518	1/12/83
45	12/14/82	"	Gottlieb	3301735187	1/12/83
46	12/14/82	"	Bernstein	3302036857	1/17/83
47	12/14/82	"	Miller	3302036859	1/17/83
48	12/14/82	"	Slater	3302036858	1/17/83
49	12/14/82	"	Rones	3302036861	1/17/83
50	12/14/82	"	Hendelman	3302036855	1/17/83
51	12/14/82	"	Toffel	3301735186	1/12/83

Count	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
52	12/16/82	Friedwald	Edelson	3302136157	1/18/83
53	12/16/82	"	Gladstain	3302036853	1/17/83
54	12/16/82	"	Breisacher	1302126807	1/18/83
55	12/16/82	"	Goldberger	3302136169	1/18/83
56	12/16/82	"	Hauseman	1302126799	1/18/83
57	12/16/82	"	Berel	1302126801	1/18/83
58	12/16/82	"	Eiss	3302036850	1/17/83
59	12/16/82	"	Patrick	1302126800	1/18/83
60	12/16/82	"	Habish	3302036949	1/17/83
61	12/16/82	Friedwald	Nagelberg	3302136158	1/18/83
62	12/16/82	"	Bernstein	3302136168	1/18/83
63	12/16/82	"	Lipschitz	3302136163	1/18/83
64	12/16/82	"	Leon	3302136160	1/18/83
65	12/16/82	"	Mead	3302036852	1/17/83
66	12/16/82	"	Hindle	3302136170	1/18/83
67	12/16/82	"	Pfarrer	3302136164	1/18/83
68	12/16/82	"	Mayer	3302136156	1/18/83
69	12/16/82	"	Hausner	3302136167	1/18/83

Count	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
70	12/16/82	Friedwald	Dorrien	1302126806	1/18/83
71	12/16/82	"	Adler	3302136159	1/18/83
72	12/16/82	"	Toffel	3302136166	1/18/83
73	12/28/83	Riverside	Glassing	8336420570	12/28/83
74	12/28/83	"	Decker	8336420576	12/28/83
75	12/28/83	"	Geiger	8336420847	12/28/83
76	12/28/83	"	Merlmelste	8336420572	12/28/83
77	12/28/83	"	Martin	8336420845	12/28/83
78	12/28/83	"	Gannon	8336420516	12/28/83
79	12/28/83	"	Villa	8336420571	12/28/83
80	12/28/83	"	Lynch	8336420569	12/28/83
81	12/28/83	"	Kerr	8336420568	12/28/83

(Title 18, United States Code, Sections 287 and 2.)

FARRELL L. McCLANE

FARRELL L. McCLANE
Foreperson

/s/ RUDOLPH W. GIULIANI

RUDOLPH W. GIULIANI
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

85 CRIM. 0247 (LPG)

UNITED STATES OF AMERICA

vs.

IRWIN HALPER, DEFENDANT

[Filed July 9, 1985]

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government AUSA Jim Bevita the defendant appeared in person on this date 7/9/85

COUNSEL

WITH COUNSEL MICHAEL K. EDELMAN

FINDING & JUDGMENT

There being a verdict of guilty on all counts 1 through 81. Defendant has been convicted as charged on the offense(s) of mail fraud, submitting false claims. (Title 18, U.S.C., Secs 1341 and 2.) (Title 18, U.S.C., Secs 287 and 2.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on each of counts 1 through 16,

each to run concurrent to each other. Two (2) years on each of counts 17 through 81 each to run concurrent to each other and concurrent to counts 1 through 16.

FINED \$5,000.00 on each of counts 17 through 81 each to run concurrent to each other. Fine is to be a committed fine. Total fine \$5,000.00.

SPECIAL CONDITIONS OF PROBATION

Defendant is to voluntarily surrender to the institution designated by the Bureau of prisons on a day no later than 7/30/85 at 12 noon. If no prison is designated by 7/30/85 defendant is to voluntarily surrender to the U.S. Marshal at Foley Square on 7/30/85 at 10 a.m.

Bail continued as presently set.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends, that the defendant serve his sentence at the satellite camp at Danbury or Allenwood.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY OF

THIS DATE 7/9/85

By [illegible]

DEPUTY

SIGNED BY

U.S. District Judge

/s/ LEE P. GAGLIARDI

LEE P. GAGLIARDI

Date 7/9/85

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

86 Civ.

UNITED STATES OF AMERICA, PLAINTIFF

v.

IRWIN HALPER AND MORRIS HALPER, DEFENDANTS

COMPLAINT

[Filed Apr. 11, 1986]

Plaintiff United States of America, by its attorney Rudolph W. Giuliani, United States Attorney for the Southern District of New York, for its complaint, alleges the following upon information and belief:

1. This is an action for damages and penalties under the False Claims Act, 31 U.S.C. §§ 3729-3731, and principles of common law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3730(a).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that the claims arose in this District.

THE PARTIES

4. Plaintiff is the United States of America. The United States Department of Health and Human Services ("HHS") is an agency of the United States and has principal responsibility for administering the Social Security Act. Blue Cross and Blue Shield, Inc. of Greater New York ("Blue Cross") acts as a fiscal intermediary pursuant

to contract with HHS and administers the Medicare Program described below. Its offices are located at 622 Third Avenue, New York, New York.

5. Defendant Irwin Halper was at all relevant times a resident of the State of New York. He is not a member of an armed force of the United States.

6. Defendant Morris Halper is and was at all relevant times a physician licensed to practice medicine in the State of New York. He is not a member of an armed force of the United States.

DEFENDANTS' SCHEME TO DEFRAUD

7. The Medicare Program was created by Congress in 1965 under Title XVIII of the Social Security Act. The program provides for basic insurance coverage of in-hospital and out-patient medical services for individuals age 65 and over and certain other persons entitled to Social Security benefits because of disability.

8. Providers of Medicare services under the Supplementary medical insurance benefits program ("Medicare, Part B") file claims for Part B services on standardized Medicare claim forms, on which certain information about the provider, the patient, and the nature of the medical services performed is to be provided. Each such claim form is processed by Blue Cross as the Medicare fiscal intermediary for HHS, and Blue Cross issues a check directly to the provider for the amount of any approved claim. This has been the procedure since at least January 1982.

9. As part of the description of the medical services performed, the provider was instructed to include on the claim forms the Medicare billing procedure code that corresponded to each medical service. The Medicare procedure code was found in manuals made available to each

provider by Blue Cross, listing the procedure code corresponding to each type of medical service and the cost Medicare would pay to providers for that service.

10. In addition to the procedure codes corresponding to each particular medical service, the manuals also specified two procedure codes to be included on Medicare claim forms so that providers could receive additional reimbursement for performing a medical service when they had to travel to a private home, a nursing home or a Skilled Nursing Facility ("NH") to perform that service. The "9018" procedure code was the proper code for seeking reimbursement for services performed on the *first* or *only* patient seen at a private home, a nursing home or a Skilled Nursing Facility. The "9019" procedure code was the proper code for seeking reimbursement for services performed on each *subsequent* patient seen on the same day at the same facility. According to the manuals, at all relevant times, the reimbursement allowed by Medicare for services billed under the "9018" code was either \$10.00 or \$12.00, and the reimbursement allowed by Medicare for services billed under the "9019" code was \$3.00.

11. Defendant Irwin Halper was at all relevant times the manager of the New City Medical Laboratories, Inc. ("NCML"), 345 North Main Street, New City, New York 10956, whose employees provided medical services to patients at, *inter alia*, the following two facilities pursuant to contracts between NCML and those two facilities: Friedwald House, New Hempstead Road, New City, New York and Riverside Nursing Home, Route 9W, Haverstraw, New York. Defendant Morris Halper was at all relevant times the director of NCML.

12. From in or about January 1982 until in or about December 1983, defendants knowingly made or caused to be made to the United States, through its fiscal intermediary Blue Cross, certain false and fraudulent claims

for Medicare claims by submitting claim forms that falsely and fraudulently characterized certain services performed by NCML as services reimbursable under the higher-priced "9018" procedure code when in truth and in fact, as defendants then well knew, the services were not reimbursable under the "9018" code but were reimbursable only under the "9019" code because the services were performed not on the first or only patient but on subsequent patients at a particular NH facility on a particular day. At least 65 such false and fraudulent claims were submitted by defendants, and these claims are identified and listed in the schedule annexed hereto, and incorporated herein, as Exhibit A.

13. The Medicare claim forms submitted by defendants were accompanied by certifications by defendant Morris Halper that certain medical services had been rendered at certain times and places in a certain manner when in fact, as defendants then well knew, those procedures and services had not been performed as certified.

14. The United States and Blue Cross, unaware of the foregoing circumstances and conduct of defendants, made payment on the Medicare claims listed in Exhibit A at the higher "9018" rate when the claims should have been paid at the lower "9019" rate.

COUNT I

False Claims Act

15. Plaintiff repeats and realleges the allegations of paragraphs 1 through 14 above.

16. For the purpose of obtaining payment by the United States of claims which defendants knew to be false and fraudulent, defendants knowingly made, used or caused to be made false, fictitious and fraudulent statements concerning the performance of certain medical

services on Medicare patients which they falsely claimed entitled them to reimbursement at the higher "9018" rate.

17. Plaintiff made payment on the false, fictitious and fraudulent claims submitted by defendants and as a result was damaged in an amount to be determined at trial, subject to doubling and a \$2,000 forfeiture on each of at least 65 false claims.

COUNT II

Common Law Fraud

18. Plaintiff repeats and realleges the allegations of paragraphs 1 through 17 above.

19. Statements made by defendants as to the performance of certain medical services and defendants' entitlement to payment at the higher "9018" rate for the Medicare claims listed in Exhibit A hereto were misrepresentations of material fact.

20. Defendants made these representations with knowledge of their falsity or with reckless disregard for their truth.

21. Defendants made these representations intending that the United States and Blue Cross rely on them in determining whether to approve and pay the Medicare claims listed in Exhibit A.

22. The United States and Blue Cross, acting in reliance on defendants' misrepresentations, paid defendants on their fraudulent claims.

23. As a result of defendants' actions, plaintiff has been damaged in an amount to be determined at trial.

COUNT III

Unjust Enrichment

24. Plaintiff repeats and realleges the allegations of paragraphs 1 through 23 above.

25. Because of payments made to defendants on the Medicare claims listed in Exhibit A, defendants have been unjustly enriched to the detriment of the United States and the United States has been damaged in an amount to be determined at trial.

COUNT IV

Mistake of Fact

26. Plaintiff repeats and realleges the allegations of paragraphs 1 through 25 above.

27. The United States, through its fiscal intermediary Blue Cross, paid defendants on the Medicare claims listed in Exhibit A based on the erroneous belief that the representations made by defendants were true and correct and that their claims for reimbursement at the higher "9018" rate were valid and proper.

28. Plaintiff's erroneous beliefs were material to its determination to pay defendants on their Medicare claims.

29. As a result of its payments, plaintiff was damaged in an amount to be determined at trial.

WHEREFORE, plaintiff United States of America demands and prays that judgment be entered in its favor and against defendants as follows:

(a) On Count I, in the amount of double plaintiff's damages as may be determined at trial, plus \$130,000 in forfeitures, together with interest, costs and attorneys' fees;

(b) On Count II, in the amount of plaintiff's damages as may be determined at trial, plus interest, costs and attorneys' fees;

(c) On Count III, in the amount of plaintiff's damages as may be determined at trial, plus interest, costs and attorneys' fees;

(d) On Count IV, in the amount of plaintiff's damages as may be determined at trial, plus interest, costs and attorneys' fees;

(e) For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 11, 1986

RUDOLPH W. GIULIANI
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: /s/ AMY ROTHSTEIN

AMY ROTHSTEIN
Assistant United States Attorney
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New York, New York 10007
Telephone: (212) 791-1976

SCHEDULE OF CLAIMS

Count of Indictment*	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
17	1/12/82	Friedwald	Curtis	1205622763	2/16/82
18	1/12/82	"	Smith	1206729223	3/4/82
19	1/12/82	"	Hindle	1205301945	2/16/82
20	1/12/82	"	Hausner	1205301931	2/16/82
21	1/12/82	"	Hendelman	1206728688	2/16/82
22	6/2/82	Riverside	McCabe	1216926347	6/14/82
23	6/2/82	"	Paider	1216926338	6/14/82
24	6/2/82	"	Decker	1217228947	6/14/82
25	6/2/82	"	Geiger	1216926195	6/14/82
26	6/2/82	"	Hasko	1216926199	6/14/82
27	6/2/82	"	Kogan	1216926197	6/14/82
28	12/6/82	Riverside	Koepping	3300536037	12/30/82
29	12/6/82	"	Johnson	3300536034	12/30/82

*United States v. Irwin Halper, 85 Cr. 247 (LPG).

EXHIBIT A

Count of Indictment	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
30	12/6/82	Riverside	Fein	3300536036	12/30/82
31	12/6/82	"	Tracy	1301228964	1/7/83
32	12/6/82	"	Graff	3234735129	12/9/82
33	12/6/82	"	Rose	3301237116	1/7/83
34	12/6/82	"	Martinez	3234735131	12/9/82
35	12/6/82	"	LaPlace	3234735101	12/9/82
36	12/6/82	"	Yonko	3234735128	12/9/82
37	12/6/82	"	Clark	3234735100	12/9/82
38	12/14/82	Friedwald	Greenberg	3302036851	1/17/83
39	12/14/82	"	McArdle	3302036860	1/17/83
40	12/14/82	"	Klein	3302036856	1/17/83
41	12/14/82	"	LaBlang	3305333910	1/17/83
42	12/14/82	"	Schweitzer	1301705517	1/12/83
43	12/14/82	"	Feldman	3302036864	1/17/83
44	12/14/82	"	Storm	1301705518	1/12/83
45	12/14/82	"	Gottlieb	3301735187	1/12/83
46	12/14/82	"	Bernstein	3302036857	1/17/83
47	12/14/82	"	Miller	3302036859	1/17/83

Count of Indictment	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
48	12/14/82	Friedwald	Slater	3302036858	1/17/83
49	12/14/82	"	Rones	3302036861	1/17/83
50	12/14/82	"	Hendelman	3302036855	1/17/83
51	12/14/82	"	Toffel	3301735186	1/12/83
52	12/16/82	Friedwald	Edelson	3302136157	1/18/83
53	12/16/82	"	Gladstain	3302036853	1/17/83
54	12/16/82	"	Breisacher	1302126807	1/18/83
55	12/16/82	"	Goldberger	3302136169	1/18/83
56	12/16/82	"	Hauseman	1302126799	1/18/83
57	12/16/82	"	Berel	1302126801	1/18/83
58	12/16/82	"	Eiss	3302036850	1/17/83
59	12/16/82	"	Patrick	1302126800	1/18/83
60	12/16/82	"	Habish	3302036949	1/17/83
61	12/16/82	Friedwald	Nagelberg	3302136158	1/18/83
62	12/16/82	"	Bernstein	3302136168	1/18/83
63	12/16/82	"	Lipschitz	3302136163	1/18/83
64	12/16/82	"	Leon	3302136160	1/18/83

Count of Indictment	Date of Services	Place of Services	Patient	Medicare Claim Number	Approximate Date Claim Submitted
65	12/16/82	Friedwald	Mead	3302036852	1/17/83
66	12/16/82	"	Hindle	3302136170	1/18/83
67	12/16/82	"	Pfarrer	3302136164	1/18/83
68	12/16/82	"	Mayer	3302136156	1/18/83
69	12/16/82	"	Hausner	3302136167	1/18/83
70	12/16/82	"	Dorrien	1302126806	1/18/83
71	12/16/82	"	Adler	3302136159	1/18/83
72	12/16/82	"	Toffel	3302136166	1/18/83
73	12/28/83	Riverside	Glassing	8336420570	12/28/83
74	12/28/83	"	Decker	8336420576	12/28/83
75	12/28/83	"	Geiger	8336420847	12/28/83
76	12/28/83	"	Merlmelste	8336420572	12/28/83
77	12/28/83	"	Martin	8336420845	12/28/83
78	12/28/83	"	Gannon	8336420516	12/28/83
79	12/28/83	"	Villa	8336420571	12/28/83
80	12/28/83	"	Lynch	8336420569	12/28/83
81	12/28/83	"	Kerr	8336420568	12/28/83

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION 86 Civ. 2955 (RWS)

UNITED STATES OF AMERICA, PLAINTIFF

against

IRWIN HALPER AND MORRIS HALPER, DEFENDANTS

ANSWER

[Filed May 8, 1986]

Defendant, Irwin Halper, as and for an answer to this plaintiff's complaint alleges pro se as follows:

1. Denies each and every allegation contained in paragraphs "12", "13", "16", "17", "20", "21", "22", "23", "29".

2. Denies knowledge or information sufficient to form a belief as to paragraphs "6", "8", "9", "10", "14", "19", "25", "27", "28".

3. Repeats denial of each and every allegation as set forth above and repeated in paragraphs "15", "18", "24", "26".

WHEREFORE, defendant Irwin Halper demands that each count of plaintiff's complaint be dismissed and the defendant be awarded the costs of this action and such

other and further relief as this Court deems just and proper.

April 27, 1986

/s/ IRWIN HALPER

Irwin Halper

pro se

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 86-CIV2955

UNITED STATES OF AMERICA, PLAINTIFF

vs.

IRWIN HALPER AND MORRIS HALPER, M.D.
DEFENDANT-THIRD PARTY PLAINTIFF

vs.

ROBERT HALPER, THIRD PARTY DEFENDANT

HON. ROBERT SWEET

[Filed June 11, 1986]

THIRD PARTY COMPLAINT

Defendant-Third Party Plaintiff, Morris Halper, residing at 41-38 Erli Road, Fair Lawn, New Jersey, complaining of defendant says:

1. Plaintiff United States of America has filed against Morris Halper a Complaint, a copy of which is annexed as Exhibit "A".

2. Third Party defendant Robert Halper resides at 6 Sterling Road, Armonk, New York.

3. From 1980 to 1984, Defendant-Third Party Plaintiff, Morris Halper held the nominal title of Medical Director of New City Medical Laboratories, Inc. (hereinafter "NCML").

4. At all relevant times Third Party Defendant Robert Halper was an officer, stockholder and employee of NCML.

5. At all relevant times Third Party Defendant Robert Halper participated in the usual daily business of NCML, including billing.

6. Unbeknownst to Defendant-Third Party Plaintiff, Morris Halper, Third Party Defendant Robert Halper submitted false, fictitious and fraudulent billing statements to plaintiff and to Blue Cross.

7. Third Party Defendant also forged the name of Defendant-Third Party Plaintiff, Morris Halper on billing statements submitted by NCML to Plaintiff and to Blue Cross.

WHEREFORE, Defendant-Third Party Plaintiff, Morris Halper demands judgment against Third Party Defendant Robert Halper for indemnification and contribution in the event judgment is entered against Morris Halper, plus counsel fees, costs of suit and damages suffered.

JURY DEMAND

Third Party Plaintiff demands a trial by jury on all issues.

KUTTNER, TONER &
DiBENEDETTO

BY: /s/ DANIEL J. DiBENEDETTO
3 Becker Farm Road
Roseland, New Jersey 07068
(201) 994-1600
Attorneys for Defendant/
Third Party Plaintiff
Morris Halper

Dated: JUNE 10, 1986

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

86 Civ. 2955 (RWS)

UNITED STATES OF AMERICA, PLAINTIFF

v.

IRWIN HALPER AND MORRIS HALPER, DEFENDANTS

STIPULATION AND ORDER OF DISMISSAL AS TO DEFEN-
DANT MORRIS HALPER

[Filed Oct. 17, 1986]

IT IS HEREBY STIPULATED AND AGREED by and
between the parties to the above action that the action
shall be dismissed as against defendant Morris Halper,
pursuant to Fed. R. Civ. P. 41(a)(1).

Dated: New York, New York
October 8, 1986

RUDOLPH W. GIULIANI
United States Attorney for the
Southern District of New York
Attorney for United States
of America

By: /s/ AMY ROTHSTEIN
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Attorneys for Defendant
Morris Halper

BY: /s/ DANIEL J. DiBENEDETTO
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P.O. Box 26
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(201) 994-1600

/s/ IRWIN HALPER
IRWIN HALPER
Defendant Pro Se
6 Sterling Road
Armonk, New York 10504

SO ORDERED: 10/15/86

/s/ SWEET
United States District Judge

Supreme Court of the United States

No. 87-1383

UNITED STATES, APPELLANT

v.

IRWIN HALPER

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

June 13, 1988.